IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B.CIVIL WRIT PETITION NO.3182/1998.

Vanila Exhibitors Pvt. Ltd., Bhilwara.

VERSUS

The State of Rajasthan.

05.09.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.S.N.Kumawat, for the petitioner.
Mr.B.K.Sharma, Deputy Government Advocate.

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In this writ petition, the petitioner has challenged the order dated 18.10.1997 passed by the learned Revenue Minister whereby he has canceled the order of allotment dated 04.10.1982 passed by the Collector for allotment of land to the petitioner for the construction of cinema under Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agricultural Land for Construction of Cinema and Hotel and for Establishment of Petrol Pump) Rules, 1978 (hereinafter referred to as “the Rules of 1978”).

The facts, in nutshell, are that the petitioner was allotted a piece of land vide order of the Collector, Bhilwara dated 04.10.1982 for construction of a cinema at village Hurda in District Bhilwara. In pursuance of the order of allotment the lease-deed was also executed on 23.12.1982. The same has been filed as Annexure-1 on record. It appears that in spite of the petitioner-company having acquired the said land by means of allotment in its favour, the company was unable to construct the cinema for various reasons as have been mentioned in Annexure-4 which is the application given by the petitioner-company to the show cause notice which was given to the petitioner-company as to why the

lease granted of the land for construction of cinema should not be canceled.

After hearing the petitioner on the notice that was issued and after considering the reply the Collector, Bhilwara passed an order on 28th March of 1992 and held that the petitioner had not put the land to the required use of the construction of cinema and had, therefore, committed breach of the conditions and also the fact that petitioner-company had transferred the land to a third party without prior approval and, therefore, the lease in favour of the petitioner-company and the order of allotment was set aside. Against the order dated 28th March of 1992 (Annexure-5) passed by the Collector, the petitioner-company preferred an appeal before the learned Revenue Appellate Authority and the learned Revenue Appellate Authority concurred with the findings given by the learned Collector and dismissed the appeal filed by the petitioner vide order dated 03.02.1993 (Annexure-6) on identical grounds.

The petitioner then preferred a second appeal before the learned Board of Revenue and the learned Board of Revenue vide its judgment dated 04.06.1996 (Annexure-7) accepted the appeal and set aside the orders passed by the Collector and the learned Revenue Appellate Authority. It appears that after the judgment of learned Board of Revenue allowing the appeal of the petitioner, the Government issued a notice to the petitioner under Rule 11 of the Rules of 1978 requiring the petitioner to show cause as to why the allotment should not be canceled. The petitioner submitted his reply and on behalf of the State,

the Tehsildar also submitted a factual report by way of reply. The learned Minister who heard the revision in exercise of the powers under Rule 11 of the Rules of 1978 passed the following order (Annexure-8) while exercising the powers under the Rules of 1978 :-

> "यधपि नियमो में स्पष्ट तौर पर कोई शर्त नही है कि किसी निश्चित अवधि में भूमि का उपयोग किया जायेगा लेकिन फिर भी यह तथ्य अंतनिर्हित है कि जिस प्रयोजनार्थ भूमि का आवंटन किया गया है उस प्रयोजनार्थ भूमि का उपयोग किया जाना चाहिए तथा एक उचित समयावधि के पश्चात् तो कम-से-कम उपयोग कर ही लेना चाहिए । आवंटी को यह भूमि 1982 में आवंटित हुई थी लेकिन अभी तक आवंटी ने न तो होटल का ही निर्माण किया है और न सिनेमा का । ऐसी परिस्थिति में आवंटी ने आवंटन का उद्देश्य एवं प्रयोजन ही विफल कर दिया है । तहसीलदार हुरडा ने प्रकट किया है कि प्रस्तावित भूमि सार्वजनिक प्रयोजन के काम आ रही है तथा इस भूमि में जल झूलनी ग्यारस, एकादशी एवं दशहरे के मेले का आयोजन होता है । आवंटी ने इस भूमि पर चाहरदीवारी का निर्माण करने की कोशिश की तो ग्राम पंचायत ने भी इसका विरोध किया था तथा भूमि आज भी सार्वजनिक प्रयोजन के काम में ली जाना प्रकट किया गया है । ऐसी स्थिति में जिला कलेक्टर को भूमि आवंटी को लीज पर नहीं देनी चाहिए थी बल्कि इस बात की जांच करनी चाहिए थी कि क्या भूमि आवंटन के लिए उपलब्ध है ? उपरोक्त परिस्थितियों में चूंकि आवंटी ने भूमि का उपयोग दीर्घ अवधि निकल जाने के पश्चात् भी नही किया है अतः उन्होंने आवंटन का प्रयोजन ही विफल कर दिया । ऐसी स्थिति में राज. लैण्ड रेवेन्यू (अलॉटमेंट, कनवर्जन एण्ड रैग्यूलराईजेशन आफ एग्रीकल्चर लैण्ड फोर कन्सट्रक्शन आफ सिनेमा, होटल एण्ड पैट्रोल पम्पस) 1978 के नियम 11(1) द्वारा प्रदत्त अधिकारों के अन्तर्गत मैसर्स वनीला एक्जिबिटर्स प्रा. लि. को ग्राम हुरडा के खसरा नं. 1061 व 1062 की भूमि 4 बिघा जो जिला कलेक्टर के आदेश दिनांक 4.10.82 से आवंटित कि गई थी, का आवंटन लीज निरस्त की जाती है तथा भूमि को सार्वजनिक उपयोग हेतु सैटअपार्ट किए जाने के जिला कलेक्टर भीलवाडा के आदेश दिनांक 22.8.92 को पुनस्थापित किया जाता है । आदेश सुनाया गया ।"

Being aggrieved by the aforesaid order (Annexure-8) passed by the Government under Rule 11 of the Rules of 1978, the petitioner-company has preferred this writ petition.

Learned counsel appearing on behalf of the petitioner has contended that the Government had no jurisdiction to pass the impugned order (Annexure-8) dated 18.10.1997 exercising the powers in revision under Rule 11 when once the matter with regard to the cancellation of lease had been taken up by the Collector and after the order of Collector canceling the lease of the petitioner had been set aside by

the learned Board of Revenue, there was no scope for the learned Minister to have exercised the powers under Rule 11.

Learned Deputy Government Advocate appearing on behalf of the State in response to above submission of the petitioner has contended that the scope of Rule 11 with regard to the exercise of revisional jurisdiction by the Government is distinct from the one under Rule 10 for cancellation of lease on account of breach of any of the conditions or Rules. It is submitted by the learned Deputy Government Advocate that proceedings which started with the issuance of notice by the Collector for cancellation of lease and passing of the order by the Collector for cancellation of lease which was ultimately set aside by the learned Board of Revenue by its judgment dated 04.08.1986 was in respect of the proceedings pertaining to the cancellation of lease on the notice issued by the Collector on account of non-utilization of the land and other grounds. It is submitted that in distinction to the aforesaid powers under Rule 11 are exercised by the State Government in order to satisfy itself with regard to any case decided and have been exercised in respect of the validity of the order of allotment dated 04.10.1982 and the learned Minister has come to the conclusion, as has been mentioned in the said order that the allotment itself was bad in the eye of law as it was found that no prior inquiry was held to satisfy whether the land was available for allotment or not. It has been submitted that both the Rules operate in two different spheres and, therefore, the very fact that learned Board of Revenue has decided in favour of the petitioner does not debar the Government from exercising powers under Rule 11.

I have considered the rival submissions and I am of the opinion that so far as the scope of Rule 10 with regard to the breach of the conditions of lease or with regard to the breach of Rules and the subsequent cancellation of lease in pursuance of the aforesaid is concerned, it operates in a different field in distinction to the powers exercised by the Government under Rule 11. The order of the Collector passed on 28.03.1993 was in exercise of the powers under Rule 10 of the Rules for breach of the conditions of the lease/allotment/Rules on account of non-utilization of the land allotted for construction of cinema and transfer of the same to a third party without prior permission. On the other hand, Rule 11 deals with the powers of the Government to examine and satisfy itself about the correctness of any orders or proceedings. Rule 11 of the Rules of 1975 reads as under :-

> "**11. Powers of the State Government**.- (1) Notwithstanding anything contained in these rules, the State Government either on its own motion or on the application of any person, shall have the power to call for the record of any case and pass such orders as it deems fit, after giving the parties concerned an opportunity of being heard.
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> (2) Notwithstanding anything contained in these rules, and subject to the provisions of section 102 and 90-A of the Act, the State Government shall have powers to allot convert or regularise the use of agricultural land for construction of a Cinema or a Hotel or for establishment of a petrol pump on any terms as it deems fit."

A perusal of the above Rule 11 goes to show that State Government can exercise the powers under Rule 11 either on its own motion or on the application moved by any person and shall have the power to call for the record of any case and pass such orders as deems fit. The requirement further is that no such order can be passed without

affording the opportunity to the parties of being heard.

In the instant case, a look at the order passed by the learned Minister (Annexure-8) goes to show that the learned Minister has taken into note all the facts that the Tehsildar has submitted a report wherein it has been submitted that land in question was being used by the public and the community for the purposes of melas etc., more particularly on the occasions of Jal Jhoolani Gyaras, Aikadashi and Dashera. Learned Minister was, therefore, of the opinion that the Collector ought to have first inquired into this aspect of the matter as to whether the land in question which was allotted to the petitioner was available for the allotment. The learned Minister has come to the conclusion on the basis of the material placed before him and after having gone through the record and the report of the Tehsildar that the Collector failed to look into the question as to whether the land was available for allotment or not. Having come to the aforesaid conclusion the learned Minister has canceled the order of allotment dated 04.10.1982 on the aforesaid ground that the Collector did not hold any inquiry before making allotment as to whether or not the land was available for allotment. This is an essential requirement under the allotment Rules that the land should be such which is available and capable of being allotted.

Therefore, so far as the proceedings under Rule 11 are concerned, the same have been initiated and the orders have been passed taking into consideration the fact that initially before passing the order of allotment dated 04.10.1982 it does not appear from the record

that the Collector applied his mind to the basic ingredient which is required to be taken into consideration before making any order of allotment as to whether or not the land was available for allotment. In view of the above, so far as the proceedings under Rule 11 are concerned, to the same no exception can be taken. Suffice it to say that so far as the orders passed on the notice to show cause for cancellation of lease in exercise of the powers under Rule 10 are concerned, they stand on a different footing as they relate to the breach of any of the conditions either of the Rules or of the lease executed between the parties which presuppose that the allotment is a valid allotment and even if a person, as in the instant case of the petitioner it has been found by the learned Board of Revenue that no such breach as was alleged in the notice was committed by the petitioner and, therefore, the notice was set aside and the order of cancellation of lease was set aside. In these proceedings under Rule 10 the Collector, the Revenue Appellate Authority nor the Board of Revenue were concerned with the validity of the order of allotment dated 04.10.1982. But the powers under Rule 11 have been exercised on a totally different footing wherein the very inception of the grant of lease has been examined by the Government and it has been found that the Collector did not hold any inquiry which was required before making the allotment to see whether the land in dispute was such which was capable/available for allotment.

In view of the above, I am not inclined to accept the contentions of the learned counsel for the petitioner. No case for interference with the impugned order of the learned Minister is called for.

However, having held so, I am of the view that in case the petitioner moves an application for allotment of alternative land to the Collector and even for the disputed land, the Collector in the light of the observations made by the learned Minister while deciding the revision petition by the order dated 18.10.1997 (Annexure-8) would decide the said application in accordance with law. It would be open for the Collector to hold an inquiry into the relevant considerations and in case the learned Collector comes to the conclusion that the land is available for allotment and is capable of being allotted, the learned Collector is free to allot the same to the petitioner in accordance with the relevant provision of law.

Subject to the aforesaid, this writ petition stands disposed of. The stay application also stands disposed of.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.